



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2018-0393; FRL-9988-23-Region 5]**

**Air Plan Approval; Ohio; Open Burning Rules**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the open burning standards in the Ohio State Implementation Plan (SIP) under the Clean Air Act (CAA). On June 4, 2018, Ohio Environmental Protection Agency (Ohio) requested the approval of its revised open burning rules, which include adding requirements for air curtain burners, allowing law enforcement to burn seized drugs, further restricting the materials that may be burned, and updating definitions and references.

**DATES:** Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2018-0393 at <http://www.regulations.gov>, or via email to [blakley.pamela@epa.gov](mailto:blakley.pamela@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed

from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Matt Rau, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6524, [rau.matthew@epa.gov](mailto:rau.matthew@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is EPA Proposing to Approve?
- II. Why Did Ohio Request This SIP Revision?
- III. What is EPA’s Analysis of the Revisions?
- IV. What Action is EPA Taking?
- V. Incorporation by Reference
- VI. Statutory and Executive Order Reviews

**I. What is EPA Proposing to Approve?**

EPA is proposing to approve revisions to Ohio’s open burning rules submitted on June 4, 2018. The state submitted revisions to Ohio Administrative Code (OAC) Chapter 3745-19, “Open Burning Standards.” EPA proposes approving the revised OAC rules 3745-19-01, 3745-19-03, 3745-19-04, and 3745-19-05 into the Ohio SIP.

**II. Why Did Ohio Request This SIP Revision?**

Ohio reviewed and revised its open burning rules to satisfy a state requirement to review its rules every five years. Ohio’s submission includes additional revisions that the state made since the last EPA approval of OAC 3745-19 into the Ohio SIP on March 21, 2008 (73 FR 15081).

**III. What is EPA’s Analysis of the Revisions?**

EPA evaluated the revisions to Ohio's open burning standards under the CAA. The rules as effective at the state level on April 30, 2018, were compared to rules approved into the Ohio SIP. The rules OAC 3745-19-01, OAC 3745-19-03, OAC 3745-19-04, and OAC 3745-19-05 have changed. EPA evaluated the revisions within those rules.

Ohio made minor revisions to rules OAC 3745-19-01, OAC 3745-19-03, OAC 3745-19-04, and OAC 3745-19-05 that update citations, renumber sections, and standardize formatting. EPA reviewed these minor revisions, found them acceptable, and is proposing their approval.

OAC 3745-19-01, "Definitions"

Ohio made additions to the definitions of agricultural waste and residential waste that are more restrictive than those contained in the current Ohio SIP. Ohio added definitions for air curtain burner, air curtain destructor, building materials, and inhabited building. Other open burning standards use these new definitions. OAC 3745-19-04(C)(6) uses air curtain burner and air curtain destructor. OAC 3745-19-03(C)(3)(e) and 3745-19-04(B)(3)(e) use building material. OAC 3745-19-03 and 3745-19-04 use inhabited building. Ohio also updated the incorporation by references. Ohio further updated the paragraphs to keep the definitions in alphabetical order and

made other clerical revisions to OAC 3745-19-01. EPA finds that the additions and revisions to OAC 3745-19-01, "Definitions" support Ohio's open burning standards. EPA is proposing to approve the revisions.

OAC 3745-19-03, "Open burning in restricted areas"

The addition of OAC 3745-19-03 (B)(5) allows law enforcement agencies to burn seized drugs without notifying Ohio EPA. Ohio previously allowed this under the "similar purposes" provision of OAC 3745-19-03 (B)(2). Ohio EPA concluded that adding OAC 3745-19-03 (B)(5) does not affect the scope of the rule and will not interfere with the attainment and maintenance of any National Ambient Air Quality Standard (NAAQS) and meets CAA section 110(l) requirements.

Ohio moved OAC 3745-19-03 (D)(4) to (C)(4). Moving this paragraph on prescribed burns, such as horticultural, silvicultural, and prairie burns, alters the notification requirements. Events meeting the definition and conditions in the rule will require prior notification to Ohio EPA instead of the previous requirement of prior written permission from Ohio EPA. Ohio added conditions at OAC 3745-19-03 (C)(4)(a) to (f). The party must meet the six conditions to burn that are more restrictive than the previous requirement. The conditions

enhance notifications for the local fire department and public along with recordkeeping requirements.

Ohio extended authorization for governmental agencies to burn for controlling disease and pests, subject to requirements specified in OAC 3745-19-03 (C)(1), to two additional health agencies, Ohio Department of Health and the Centers for Disease Control and Prevention. Ohio also revised OAC 3745-19-03 (C)(3)(b) and (e) to prohibit smoke from creating a visibility hazard and adding plastic and building materials to materials prohibited from being burned as agricultural waste.

Ohio's revisions to OAC 3745-19-03 adds, restricts, or rearrange, existing standards such that it is reasonable to expect emissions from open burning will not increase. Thus, EPA concurs that the revisions to OAC 3745-19-03 will not interfere with the attainment or maintenance of air quality standards. EPA finds that the revisions to "Open burning in restricted areas" are acceptable and therefore proposes approval into the Ohio SIP.

OAC 3745-19-04, "Open burning in unrestricted areas"

Ohio added a size limit, 20 feet diameter and 10 feet height, for residential and agricultural waste burning in OAC 3745-19-04 (B)(3)(f). Waste piles larger than that size require prior notification to Ohio EPA with this revision. In such a

situation, Ohio EPA will have an opportunity to review the burning plans and work with the regulated entity such that human health and the environment remain protected.

Ohio added requirements for operating an air curtain burner at OAC 3745-19-04 (C)(6). The owner or operator must obtain permit-to-install and title V permits. OAC 3745-19-04 (C)(6)(b) to (g) gives the restrictions on the location of the air curtain burner along with operating conditions. Ohio EPA deems that adding OAC 3745-19-04 (C)(6) does not affect the scope of the rule and will not interfere with the attainment and maintenance of any NAAQS and meets CAA section 110(l) requirements. EPA found that air curtain burners are a potential means of reducing waste volume while minimizing potentially harmful emissions, criteria and hazardous air pollutants, in its "Managing Debris after a Natural Disaster" report<sup>1</sup>. Under CAA sections 111 and 129, operators of subject solid waste incinerators must obtain a title V permit. Air curtain burners regulated by 40 CFR 60.2974 or 60.3069 must obtain a title V permit. Ohio's rule ensures sources meet this permitting requirement.

The other revisions to OAC 3745-19-04 are similar to the revisions made in OAC 3745-19-03. Ohio added OAC 3745-19-04

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<sup>1</sup> U.S. EPA. Managing Debris after a Natural Disaster: Evaluation of the Combustion of Storm-Generated Vegetative and C&D Debris in an Air Curtain Burner: Source Emissions Measurement Results. U.S. Environmental Protection Agency, Washington, DC, EPA/600/R-16/353, 2016.

(B)(6) that allows law enforcement to burn seized drugs without notifying Ohio EPA. Ohio moved its prescribed burning rule from OAC 3745-19-04 (C)(5) to (D)(2) while adding conditions like those in OAC 3745-19-03 (C)(4). Ohio revised OAC 3745-19-04 (D), now (D)(1) with the addition of (D)(2), to include two additional agencies, Ohio Department of Health and the Centers for Disease Control and Prevention, into the requirements for health agencies to burn for controlling disease and pests. This is analogous to the revision of OAC 3745-19-03 (C)(1). Further, Ohio revised the residential and agricultural waste burning requirements of OAC 3745-19-04 (B)(3) to prohibit smoke from creating a visibility hazard and adding plastic and building materials as prohibited materials. This revision is comparable to revisions to OAC 3745-19-03 (C)(3)(b) and (e).

Revisions that Ohio made to OAC 3745-19-04 that are similar to revisions made to OAC 3745-19-03 are acceptable for the same reasons. Namely, these revisions are to OAC 3745-19-04 (B)(6), OAC 3745-19-04 (C)(6), OAC 3745-19-04 (D)(1) and (2), plus the deletion of OAC 3745-19-04 (C)(5). It is reasonable to expect emissions from open burning will not increase from those revisions. The change to OAC 3745-19-04 (B)(3)(f) adds a restriction. The addition of OAC 3745-19-04 (C)(6) regulates air curtain burners in a manner consistent with federal rules.



EPA finds the revisions to OAC 3745-19-04 acceptable and thus is proposing the approval of this rule into the Ohio SIP.

OAC 3745-19-05, "Permission to individuals and notification to the Ohio EPA"

Ohio revised OAC 3745-19-05 (A)(1) to clarify that applicants must submit the application to burn at least 10 business days prior to the burn. The revision also clarifies that open burning permissions are effective on the date of issuance. At OAC 3745-19-05 (A)(2)(b), Ohio added fire size, quantity or acreage, as one of the required elements of the open burning application. Ohio revised OAC 3745-19-05 (A)(3) to add "when atmospheric conditions are appropriate" to the elements the applicant must demonstrate it will satisfy for Ohio to grant permission to open burn.

EPA finds that the revisions to OAC 3745-19-05 improve clarity. Adding the fire size will help Ohio evaluate the impacts from the fire while reviewing the application. Burning during favorable atmospheric conditions will avoid unnecessary impact on the public. EPA expects the revised rule to continue to protect air quality and therefore is proposing to approve OAC 3745-19-05.

**IV. What Action is EPA Taking?**

EPA is proposing to approve revisions to the open burning standards in the Ohio SIP. EPA proposes approval of OAC 3745-19-01, OAC 3745-19-03, OAC 3745-19-04, and OAC 3745-19-05, as submitted by Ohio on June 4, 2018.

## **V. Incorporation by Reference**

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Ohio Administrative Code Chapter 3745-19-01 "Definitions," 3745-19-03 "Open burning in restricted areas," 3745-19-04 "Open burning in unrestricted areas," and 3745-19-05 "Permission to individuals and notifications to the Ohio EPA", effective April 30, 2018. EPA has made, and will continue to make, these documents generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 5 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

## **VI. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of

the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 6, 2018.

Cathy Stepp,  
Regional Administrator, Region 5.

[FR Doc. 2018-27777 Filed: 12/21/2018 8:45 am; Publication Date: 12/26/2018]